IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000714

First-tier Tribunal Nos: PA/51718/2022
IA/04576/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 June 2023

Before

UPPER TRIBUNAL JUDGE MONSON

Between

MD MONIR HOSSAIN
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Alam, Legal Representative, Legit Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 19 May 2023

DECISION AND REASONS

Introduction

1. The appellant appeals from the decision of First-tier Tribunal Judge Manyarara promulgated on 13 February 2022 ("the Decision"). By the Decision, Judge Manyarara dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds against the decision of the respondent to refuse to recognise him as a political refugee.

Relevant Background

2. The appellant is a national of Bangladesh, whose date of birth is 15 March 1985. He entered the UK on 25 November 2009 as a student, having made an application for a student visa on 14 October 2009. The appellant's original student visa was valid until 27 October 2013. On 26 October 2013 the appellant applied for further leave to remain as a student. His application was granted, and the visa was issued to him on 30 December 2013, giving him leave until 30 November 2015. On 18 November 2014 the appellant's leave was curtailed, as the sponsor's licence was revoked. The appellant was given a 60-day grace period which expired on 20 January 2015. The appellant is recorded as having claimed asylum on 28 February 2017.

3. The appellant's claim was that he was at risk on return to Bangladesh as a result of his political opinion as manifested in his membership of the JCD, which is the student wing of the BNP. In addition, he claimed that he was at risk on return as the result of his *sur place* activities in the UK as a political blogger/online activist.

4. The appellant said that he had joined the JCD in 2006, and that he had become the General Secretary of his local area in 2008. The Bangladesh Awami League (BAL) had filed many false political cases against him, and he had not been able to continue with his studies. He had gone into hiding, and where he was hiding had been discovered. Therefore, he had left the country in December 2009. Before leaving the country, he had been tortured, harassed and threatened. He had been seriously injured by the RAB. If he returned to Bangladesh, he would be subjected to persecution. There was a warrant out for his arrest.

5. In the refusal decision, the respondent did not accept that the appellant was a member of the JCD. This was as the result of the respondent's conclusion that the appellant had given vague, evasive and inconsistent answers in interview. His claim to have been a General Secretary of the JCD were also rejected for the same reason.

The Decision of the First-tier Tribunal

6. The appellant's appeal came before Judge Manyarara on 27 January 2023. The appeal was conducted remotely at Taylor House via CVP. Both parties were legally represented. The Judge received oral evidence from the appellant and from a supporting witness, Mr Khoshnabish. Both witnesses were cross-examined on their respective witness statements, and the Judge gave a detailed summary of the answers which they each gave in the Decision.

7. The Judge's findings began at paragraph [41] of the Decision, where she addressed the appellant's claim that he was suffering from poor mental health (depression and memory problems). She found that this claim was "*remarkably unsubstantiated"* by any medical evidence.

8. At paragraphs [50]-[69], the Judge made detailed findings on the evidence relied upon in support of the claim that the appellant had been a member of the JCD in Bangladesh, and had suffered problems as a result, including false cases being raised against him.

9. As well as relying on the oral evidence of Mr Koshnabish in respect of his political activities with the JCD – whose evidence the Judge addressed at paragraph [61]) - the appellant also relied on letters from two individuals, both of whom were said to be General Secretaries of different parts of the JCD.

10. At paragraph [57] the Judge said:

> "… I find that these letters do not take the appellant's claim any further. This is because the letters are lacking in detail and include generalised statements about the situation for political activists in Bangladesh. I find that the authors of the letters do not specify when they are appointed to office and whether this was at the same time the appellant was living in Bangladesh."

11. At paragraph [58] the Judge reiterated that the letters provided no detail about how the individuals were familiar with the appellant, or whether they were members of the party at the same time as him. At paragraph [59] the Judge said:

> "I find that as the JCD is a student organisation, it is inherently unlikely that the authors of the letters would have been part of the organisation at the same time that the appellant was. The appellant has not been a student in Bangladesh since at least 2009. The letters were drafted in 2022. That is over a decade since the appellant was a student in Bangladesh. I find that the letters are of marginal probative value to the claim that I have already found to be lacking in either credibility or detail."

12. At paragraph [60] the Judge said:

> "The letters both refer to records that the appellant was a General Secretary. It is unclear, therefore, why the appellant has not been able to produce those records in support of his claim. Furthermore, the letters both include almost identical general statements. I find that I cannot place any reliance on these letters as representing an accurate, or truthful, description of any political activities undertaken by the appellant in Bangladesh. I further find that the letters cannot be reconciled with the appellant's lack of knowledge of the party (especially as a claimed Leader). It is not clear how the appellant could be classified as a "Leader" and "Organiser" of a Party that he knew very basic information about."

13. At paragraph [65] the Judge said that she considered the report prepared by Mr Solaiman in relation to the false charges. He was an expert on Bangladeshi politics, media, the police and criminal justice system. While she accepted that he had this expertise, she found that the documents

that he referred to as having been received and examined were in fact verified by his assistant, according to paragraph 19 of the report. His assistant's credentials were not provided. Furthermore, no witness statement had been provided by the assistant.

14. At paragraph [66] the Judge noted that Mr Solaiman said in his report that the appellant would be sentenced '*in absentia*'. She observed that this was at odds with the appellant's own statement that he was sentenced to five years' imprisonment (Question 169) for the false case in 2008. She considered that this was also at odds with his statement in interview that he did not immediately claim asylum on arrival in the UK in 2009 because he was hoping that the situation would change: *"It is not clear how the appellant was expecting that the situation would change if, according to his claim, he had already been sentenced to five years' imprisonment prior to his departure from Bangladesh."*

15. At paragraph [67] the Judge said:

> "Mr Solaiman refers to the appellant as an informed advocate for the Party (JCD/BNP). I have however found that the appellant's knowledge is lacking. I further find that Mr Solaiman's report reads as one that has been prepared by an informed advocate for the appellant, and not an independent expert report. Furthermore, Mr Solaiman was not the person who verified the documents and that person has not provided a witness statement."

16. The Judge observed that, despite claiming to have had false charges against him, to the extent that a warrant was issued for his arrest, the appellant was nevertheless able to leave Bangladesh via the normal channels, without any problems. If the appellant was considered to have crossed the path of the opposition as a result of his political activities to the extent that a case was filed against him, with a sentence of five years' imprisonment, then he would not have been able to leave Bangladesh with such relative ease, having made a visa application on his own passport. She further held that his ability to leave on his own documentation did not sit well with his claim in interview that the police were looking for him when he left Bangladesh.

17. The Judge concluded at paragraph [69] that, having considered all of the evidence in respect of the appellant's claimed membership of the JCD in Bangladesh cumulatively, the appellant had failed to establish that he was involved with the JCD prior to his arrival in the UK, or that he was placed in a climate of insecurity as a result.

18. The Judge then moved on to address the appellant's *sur place* claim. Her conclusion at paragraph [85] was that the appellant had failed to establish a well-founded fear of persecution. His account was not credible, even to the lower standard of proof.

The Grounds of Appeal

19. The appellant's solicitors settled the grounds of appeal to the Upper Tribunal. They submitted that the Judge was incorrect in law in rejecting the evidence of two prominent officials of the JCD. Firstly, the Judge had been wrong to reject their evidence on account of suspicion that it was highly unlikely that the makers of the letters had been involved in politics at the same time as the appellant, when the statement-makers had never indicated as such. Secondly, the Judge had been wrong to find suspicious the fact that the letters were highly consistent with one another. The Judge ought to have considered that the letters being consistent indicated that the appellant was indeed a member of the JCD, as this was corroborated by not one, but two, prominent individuals within the JCD. Therefore, the Judge had erred in "*unduly dismissing key evidence*".

20. The Judge had also erred in law in dismissing the evidence of the expert. His expert evidence was wholly in line with the published CPIN on Bangladesh. The Judge did not find that the expert had failed to follow the Senior President's Practice Direction. *Tanveer Ahmed -v- SSHD* [2002] UKIAT 00439 at paragraph [14] exempted local lawyers from "*considerations of fraudulence*", while paragraph [28] of the same judgment exempted experts from "*considerations of fraudulence*".

The Reasons for the Grant of Permission to Appeal

21. On 16 March 2023, First-tier Judge Hatton granted permission to appeal for the following reasons:

> "Multiple reasons are advanced in the grounds as to why the Judge erred in concluding at [69] that the appellant was not a member of the Student Wing of the Bangladesh Nationalist Party (BNP) as claimed. In particular, the Judge found at [59] that the appellant's supporting letters were of marginal probative value primarily because it was unclear how the authors were aware of the appellant's historic political activities. I do not accept this. Having perused the letters in question [appellant's bundle (AB), pp.21-22) I note they both confirm information pertaining to the appellant's joining of the BNP Student Wing in 2006 and subsequently being appointed General Secretary of his local area in 2008 were obtained from Party records. Correspondingly, in view of the highly specific information contained within each letter, it is arguable that the Judge erred in characterising the letters' contents as lacking in detail [57]. By the same token it is arguable that the Judge erred in rejecting the expert report's authentication (AB, pp 156-169) of the appellant's case documents simply because the expert delegated part of the verification process to an assistant [65]. Accordingly, permission is granted on all grounds."

The Hearing in the Upper Tribunal

22. At the hearing before me to determine whether an error of law was made out, Mr Alam developed the grounds of appeal. He also sought to supplement them by raising a challenge to the Judge's findings at paragraph [61] in respect of the supporting witness who gave oral

evidence. On behalf of the respondent, Mr Terrell developed the Rule 24 response opposing the appeal. He also correctly pointed out that the appellant did not have permission to argue a ground of appeal in respect of paragraph [61], as no issue had been taken in respect of this paragraph in the grounds of appeal. I reserved my decision.

Discussion and Conclusions

23. Ground 1 is that the Judge erred in law in dismissing the evidence of two prominent JCD officials. The premise of the error of law challenge is unsound, as the Judge did not dismiss this evidence completely, but found that at best it only had marginal probative value. As stated in *SS (Sri Lanka)* [2012] EWCA Civ 155, which is cited in the Rule 24 response, the weight to be accorded to any given piece of evidence is a matter for the Judge, and there is no error where the Judge gives an adequate explanation for their assessment of the probative value of the evidence in question.

24. I do not consider that there is any error in the Judge's approach, as put forward in the grounds of appeal. While the prominent officials in question did not claim to have been members of the JCD at the time when the appellant claims to have been a member, it was still open to the Judge to treat as a relevant consideration the fact that they did not know the appellant at the time when he said he was a member and then an office-holder in the JCD. It was also open to the Judge to find that the similarity between the supporting statements was such as to undermine their probative value rather than to enhance it. It was open to the Judge to find, as she indicated, that the similarity in the phraseology was such as to indicate that the letters had a common author, rather than each of them being the product of an independent exercise conducted independently by the two individuals concerned.

25. While both letters make reference to "*our record",* the details that are purportedly extracted from this record are very limited. They both agree that the record shows that the appellant joined the Party in 2006, and that he became General Secretary in his local area in 2008. But beyond that, there are no details whatsoever as to the programmes and meetings of the Party that he is said to have attended while in Bangladesh. Similarly, although each of them also asserts that the appellant is a victim of a politically-motivated case (singular), no detail is given about this. It was reasonably open to the Judge to characterise the letters as including "*almost identical general statements*", as exemplified by both individuals making almost identical general statements about the activities in which the appellant engaged, and about the asserted consequences of this.

26. The Judge acknowledged that the letters were purportedly based on a record that the individuals had consulted. It was open to the Judge to find that the failure to produce the record so detracted from the letters'

probative value as to render them as having at best only marginal probative value.

27. Viewed holistically, the Judge gave adequate reasons in paragraphs [57]-[60] for finding that the letters were only of marginal probative value. Accordingly, Ground 1 is not made out.

28. As to Ground 2, the key consideration is that the expert did not purport to produce copies of case documents relating to the appellant that he or his assistant had obtained from the police station; and he also did not go to the police station to authenticate the case documents that he had been sent by the appellant's UK solicitors. Instead - as is clear from his report - he sent along an assistant who reported back to him. As a result of this way of proceeding, the expert did not bring to bear his own expertise on the actual verification of the documents. His expert opinion is entirely based on the premise that the case documents sent to him by the appellant's UK solicitors have been adequately authenticated by his assistant. This is shown by paragraph 19 of his report, where the expert says as follows: "*As my assistant personally involved verifying the cases, I have a position to comment that the cases were filed against Mr [M] and others and the cases are genuine since fictitious cases were filed against many people who were dead, infirm, or migrants.*"

29. It must be acknowledged that the expert gives a detailed hearsay account of what happened at the police station. But it was entirely open to the Judge to find that the purported verification of the case documents was inadequate and unreliable for the reasons which she gave. Firstly, the credentials of the assistant were not given, and secondly, the assistant had not himself made a witness statement.

30. In addition, although the assistant is reported by the expert to have established that the two case references were genuine - in that the police station had records relating to two cases bearing the same reference numbers as the case documents - it does not appear that the assistant verified that the case documents that had been provided by the appellant to his solicitors in the UK corresponded to the case documents that were on file in the Records Office at the police station.

31. As submitted by Mr Terrell, the expert's account of the process of verification discloses a breach of the *Senior President's Guidance* dated 13 May 2020, on the topic of expert evidence. Contrary to the requirements set out in 6.2(e), Mr Solaiman fails to give the qualifications of his assistant, and he also does not certify that his assistant was acting under his supervision when undertaking the verification process, which he clearly was not. The expert's failure to comply with this aspect of the Guidance on expert evidence underscores the fact that the Judge was not wrong to treat the purported verification process as being inadequate.

32. The other argument put forward in Ground 2 is based on a misconception of the guidance given by the Court in *Tanveer Ahmed*. In finding that the expert evidence did not advance the appellant's case, the Judge was not by necessary implication finding that either the expert or his assistant was guilty of fraud. All that the Judge was finding was that the expert report was not of sufficiently reliability to establish by itself that the appellant had been named in two false criminal cases.

33. In conclusion, the Judge directed herself appropriately and made sustainable findings which were adequately reasoned. Therefore, no error of law is made out.

Notice of Decision

The decision of the First-tier Tribunal dismissing the appellant's appeal did not involve the making of an error of law. Accordingly, the decision of the First-tier Tribunal stands, and the appellant's appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity order in favour of the appellant, and the appellant has not sought anonymity for these proceedings in the Upper Tribunal.

Andrew Monson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 May 2023